

Item SPR06-05 Response Form

Title: Appellate Procedure: Record on Appeal in Criminal Cases (amend Cal. Rules of Court, rules 31, 31.1, 31.2, 32, 32.1, and 34.1)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment (Proposal SPR06-05)

Title	Appellate Procedure: Record on Appeal in Criminal Cases (amend Cal. Rules of Court, rules 31, 31.1, 31.2, 32, 32.1, and 34.1)
Summary	This proposal would make several clarifying amendments to rules 31, 31.1, 31.2, 32, 32.1, and 34.1 concerning the record on appeal in criminal cases, including: (1) providing that records of juvenile adjudications introduced at trial are to be included in the clerk's transcript; (2) providing that, with the exception of certain motions, when the defendant is the appellant, the oral proceedings on any motion by the defendant denied in whole or in part are included in the normal reporter's transcript; (3) clarifying the application of rule 31.2 relating to confidential records; (4) clarifying the procedures relating to <i>Marsden</i> hearing transcripts when the defendant raises a <i>Marsden</i> issue on appeal; (5) clarifying when the Attorney General or district attorney automatically receives a copy of the record and when they must request a copy; (6) establishing uniform requirements governing who receives copies of augmentations or corrections to such records; and (7) providing that if the record is augmented to include an amended abstract of judgment or other new order, the augmented record must also include any additional document or transcript related to the amended judgment or new order that any rule or order requires be included in the record.
Source	Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<i>Contents of clerk's transcript in noncapital cases</i> Rule 31 of the California Rules of Court establishes the contents of the clerk's and reporter's transcripts for appeals in non-capital felony cases. Subdivision (b)(13)(C) currently provides that, if the defendant is the appellant, the clerk's transcript must contain any certified record of a court or the Department of Corrections admitted in evidence to prove a prior conviction or prison term. In certain circumstances, a record of a juvenile adjudication may also be admitted into evidence by the trial court – for example, as proof of a prior “strike” under the three-strikes law. This proposal would make clear that where such a juvenile record has been admitted by the trial court, it must be included in the clerk's transcript on appeal. In addition, this proposal would require that any document admitted into evidence by the trial court for this purpose be included in the record, not just certified

records of a court or the Department of Corrections and Rehabilitation.

Contents of clerk's and reporter's transcripts in capital cases

Rule 34.1 establishes the contents of the clerk's and reporter's transcripts for appeals in capital cases. Currently, this rule identifies the contents of these transcripts by cross-referencing to the provisions of rules 31 and 31.1 relating to records in noncapital felony appeals. To make it easier for readers to understand this rule, this proposal would replace these cross-references with the text of the provisions from rules 31 and 31.1 and would clarify overlapping language from these previous cross-references.

Motion proceedings included in the normal reporter's transcript in noncapital cases

Currently, rule 31(c) provides that the normal reporter's transcript when the defendant appeals from a conviction or the People appeal from an order granting a new trial in a noncapital felony case must contain, among other things, the oral proceedings on any motion in limine and any motion for new trial. In addition, if the appellant is the defendant, rule 31(c)(9) provides that the reporter's transcript must also contain oral proceedings on any motion under Penal Code section 1538.5. In contrast, rule 31(b)(13)(A) provides that when the defendant is the appellant, the normal clerk's transcript includes any written defense motion denied in whole or in part.

The Appellate Courts Committee of the San Diego County Bar Association suggested that when the defendant is the appellant, the reporter's transcript should include not only the oral proceedings on motions under Penal Code section 1538.5 that are denied, but also any motion by the defendant that is denied in whole or in part. The types of motions that are not specifically listed in rule 31, and therefore that may not currently be included in the normal reporter's transcript under this rule, include severance motions, *Wheeler* motions, and motions to dismiss, strike, or invalidate a prior conviction (note that court reporters may be including the oral proceedings on some of these motions in the normal transcript as part of the oral proceedings at trial or sentencing). The San Diego committee noted that, to enable appellate counsel to assess whether the denial of any of these motions raises an issue on appeal, they need to review not just the written motions but also the record of the related oral proceedings.

Reporters' transcripts in felony appeals are a public expense, so transcripts should only be prepared if they are necessary for these appeals. To the extent that the transcripts of certain proceedings are

needed but are not currently being provided as part of the normal record on appeal, however, the defendant must make an augmentation request to obtain the transcripts. Such augmentation requests can delay appellate proceedings and also require the expenditure of public resources in the form of both counsels' and the courts' time. To support the timely handling of appeals and the efficient use of public resources, rule 31 must strike the appropriate balance between including in the normal record transcripts of those proceedings that *are* likely to be needed in most felony appeals and excluding those proceedings that are *not* likely to be needed in most appeals.

This proposal attempts to strike that balance by modifying rule 31 to require that when the defendant is the appellant, with certain exceptions, the oral proceedings on any motion by the defendant denied in whole or in part be included in the normal transcript. The exceptions specified in this proposal—motions that would not be automatically included in the reporter's transcript on appeal—are motions to disqualify a judge, which are reviewable only by way of a petition for a writ of mandate (Code Civ. Proc., §170.3(d)) and motions under Penal Code section 995 or 1050, which are most often reviewed by way of writ petition. The committee would particularly appreciate comments regarding whether this proposal strikes the appropriate balance in terms of which motion proceedings should be included in the normal reporter's transcript and whether other specific types of motion proceedings should be excluded from the normal transcript.

Confidential records

Rule 12.5 is entitled "Sealed records." That rule applies only to records that are not confidential by law, but which have been sealed on order of a trial court or which a party is seeking to have sealed by order of the appellate court to prevent their disclosure to the public. Rule 31.2 is also entitled "Sealed records." The content of that rule, however, addresses records that are confidential under either statute or case law. Until 2004, the predecessor to rule 31.2—rule 33.5—was entitled "Confidential in-camera proceedings." To make the distinction between rules 12.5 and 31.2 clearer, the committee is proposing that the title of rule 31.2 be revised to refer, once again, to confidential, rather than sealed, records. In addition, the committee is proposing that an application section, similar to that in rule 12.5, be added to rule 31.2 and that references to "sealing" of records in this rule be changed to refer instead to keeping these records confidential.

Transcripts of Marsden proceedings

Subdivisions (a)(4) and (5) of rule 31.2 address under what circumstances the People may obtain a copy of the transcript of a *Marsden* hearing by application and when they must file a motion to request such a transcript. Currently, these provisions state that if the defendant raises a *Marsden* issue on appeal, unless the defendant has filed a notice with the opening brief indicating that the transcript contains confidential material that is not relevant to the issues on appeal, the clerk must provide the People with the *Marsden* transcript on application. Two attorneys raised concerns that some appointed counsel may not be aware of their obligation to file a notice under this rule. They expressed further concern that, if such counsel inadvertently fails to file the required notice, the Attorney General may receive a copy of the full transcript without the defendant's having an opportunity to object.

This proposal would clarify the requirement for the defendant to file the notice by stating this requirement more directly and placing it in its own subdivision. In addition, this proposal would specifically provide that, in the event that the defendant does not file the required notice, the defendant may file an objection to the People's application seeking the *Marsden* transcript. Under this proposal, the clerk would send a copy of the full *Marsden* transcript to the People only if the defendant filed a notice indicating there was no confidential material in the transcript not relevant to the appeal, or if the defendant did not object to the People's application to obtain the transcript.

Distribution of the record

Rule 32 addresses the preparation and distribution of the record in noncapital felony appeals. Currently, this rule requires that a copy of the record automatically be prepared for and sent to the Attorney General and that, if requested, a copy also be prepared for and sent to the district attorney. In some cases, however, the district attorney, rather than the Attorney General, is counsel for the People on appeal and therefore should automatically receive a copy of the record. This proposal would clarify that a copy of the record must be automatically prepared for and sent to whichever is the counsel for the People on appeal and that either the Attorney General or the district attorney, whichever is not counsel on appeal, may also request a copy.

Rule 32.1 addresses augmenting and correcting the record in felony appeals. Currently, this rule contains various provisions regarding to whom the clerk is required to provide copies of augmented or corrected records. This proposal would simplify these requirements by

providing, in all cases, that those who received the original record under rule 32 must receive the augmented or corrected record. Since rule 32 already requires that the original record be sent to the district appellate project if counsel has not yet been appointed for a defendant, the special requirement of rule 32.1(c) that augmented records be sent to the appellate project would no longer be necessary. The requirement in rule 32.1(a) that the probation officer receive a copy of an amended abstract of judgment or other order as an augmentation to the record is similarly unnecessary because Penal Code section 1213 already requires that a copy of an abstract of judgment or order granting probation be sent to the probation officer.

Augmenting the record

Rule 32.1(a) addresses augmenting the record with an amended abstract of judgment or other order when the trial court takes some action after the record has been certified. In some circumstances, additional documents, such as a new probation report, may have been filed or a new hearing held in conjunction with the trial court's action. This proposal would clarify that any such documents or a transcript of any such hearing relevant to the new judgment or order that would ordinarily be required to be included in the record on appeal must be included as part of the augmentation.

This proposal would also amend these rules and rule 31.1 to conform to current rule style.

Attachment

Rules 31, 31.1, 31.2, 32, 32.1, and 34.1 of the California Rules of Court would be amended, effective January 1, 2007, to read:

Rule 31. Normal record

(a) Contents

If the defendant appeals from a judgment of conviction, or if the People appeal from an order granting a new trial, the record must contain a clerk's transcript and a reporter's transcript, which together constitute the normal record.

(b) Clerk's transcript

The clerk's transcript must contain:

- (1) The accusatory pleading and any amendment;
- (2) Any demurrer or other plea;
- (3) All court minutes;
- (4) All instructions submitted in writing, each one indicating the party requesting it;
- (5) Any written communication between the court and the jury or any individual juror;
- (6) Any verdict;
- (7) Any written opinion of the court;
- (8) The judgment or order appealed from and any abstract of judgment or commitment;
- (9) Any motion for new trial, with supporting and opposing memoranda and attachments;
- (10) The notice of appeal and any certificate of probable cause filed under rule 30(b);
- (11) Any transcript of a sound or sound-and-video recording furnished to the jury or tendered to the court under rule 243.9; and
- (12) Any application for additional record and any order on the application;

1
2 (13) If the appellant is the defendant, the clerk's transcript must also contain:

- 3
4 (A) Any written defense motion denied in whole or in part, with
5 supporting and opposing memoranda and attachments;
6
7 (B) If related to a motion under (A), any search warrant and return and
8 the reporter's transcript of any preliminary examination or grand
9 jury hearing;
10
11 (C) Any ~~certified record of a court or the Department of Corrections~~
12 document admitted in evidence to prove a prior juvenile
13 adjudication, criminal conviction, or prison term; and
14
15 (D) The probation officer's report.
16

17 **(c) Reporter's transcript**

18
19 The reporter's transcript must contain:

- 20
21 (1) The oral proceedings on the entry of any plea other than a not guilty plea;
22
23 (2) The oral proceedings on any motion in limine;
24
25 (3) The oral proceedings at trial, but excluding the voir dire examination of
26 jurors and any opening statement;
27
28 (4) All instructions given orally;
29
30 (5) Any oral communication between the court and the jury or any individual
31 juror;
32
33 (6) Any oral opinion of the court;
34
35 (7) The oral proceedings on any motion for new trial;
36
37 (8) The oral proceedings at sentencing, granting or ~~denial~~ denying of
38 probation, or other dispositional hearing;
39
40 (9) If the appellant is the defendant, the reporter's transcript must also
41 contain;
42

1 (A) The oral proceedings on any defense motion under Penal Code
2 section 1538.5 denied in whole or in part except motions for
3 disqualification of a judge and motions under Penal Code sections
4 995 or 1050;

5
6 (B) The closing arguments; and

7
8 (C) Any comment on the evidence by the court to the jury.
9

10 **(d) Limited normal record in certain appeals**
11

12 If the People appeal from a judgment on a demurrer to the accusatory pleading,
13 or if the defendant or the People appeal from an appealable order other than a
14 ruling on a motion for new trial, the normal record is composed of a reporter's
15 transcript of any oral proceedings incident to the judgment or order being
16 appealed and a clerk's transcript containing:
17

18 (1) The accusatory pleading and any amendment;

19
20 (2) Any demurrer or other plea;

21
22 (3) Any written motion or notice of motion granted or denied by the order
23 appealed from, with supporting and opposing memoranda and
24 attachments;

25
26 (4) The judgment or order appealed from and any abstract of judgment or
27 commitment;

28
29 (5) Any court minutes relating to the judgment or order appealed from; and
30

31 (6) The notice of appeal.
32

33 **(e)–(g) *****
34
35

36 **Rule 31.1. Application in superior court for addition to normal record**
37

38 **(a) *****
39

1 **(b) Application by either party**

2
3 Either the People or the defendant may apply to the superior court for inclusion
4 in the record of any of the following items:

5
6 (1) In the clerk's transcript: any written defense motion granted in whole or
7 in part or any written motion by the People, with supporting and opposing
8 memoranda and attachments;

9
10 (2) In the reporter's transcript:

11
12 (A) The voir dire examination of jurors;

13
14 (B) Any opening statement; and

15
16 (C) The oral proceedings on motions other than those listed in rule 31(c).

17
18 **(c)-(d) *****

19
20
21 **Rule 31.2. Sealed Confidential records**

22
23 **(a) Application**

24
25 This rule applies to records required to be kept confidential by law but does not
26 apply to records sealed under rules 243.1-243.2 or records proposed to be
27 sealed under rule 12.5.

28
29 **~~(a)~~ (b) *Marsden* hearing**

30
31 (1) The reporter's transcript of any hearing held under *People v. Marsden*
32 (1970) 2 Cal.3d 118 must be ~~sealed~~ kept confidential. The chronological
33 index to the reporter's transcript must include the *Marsden* hearing but
34 list it as "~~SEALED~~ CONFIDENTIAL" or the equivalent.

35
36 (2) The superior court clerk must send the original and one copy of the ~~sealed~~
37 confidential transcript to the reviewing court with the record.

38
39 (3) The superior court clerk must send one copy of the ~~sealed~~ confidential
40 transcript to the defendant's appellate counsel or, if appellate counsel has
41 not yet been retained or appointed, to the appellate project for the district.

- 1 (4) If the defendant raises a *Marsden* issue in the opening brief, ~~the reviewing~~
2 ~~court clerk must send a copy of the sealed transcript to the People on~~
3 ~~written application, unless the defendant has~~ must ~~served and filed with~~
4 the brief a notice stating whether or not that the confidential transcript
5 contains any confidential material not relevant to the issues on appeal. If
6 the defendant states that the transcript contains confidential material not
7 relevant to the issues on appeal, the notice must identify the portions of
8 the transcript containing this confidential material.
9
- 10 (5) If the defendant serves and files a notice under (4), stating that no
11 confidential material not relevant to the issues on appeal is contained in
12 the transcript, the reviewing court clerk must send a copy of the
13 confidential transcript to the People. If the defendant serves and files a
14 notice under (4), stating that the transcript contains confidential material
15 not relevant to the issues on appeal, the People may move to obtain a
16 copy of any relevant portion of the sealed confidential transcript.
17
- 18 (6) If the defendant raises a *Marsden* issue in the opening brief but does not
19 serve and file a notice under (4), on written application the People may
20 request a copy of the confidential transcript. Within 10 days after the
21 application is filed, the defendant may serve and file opposition to this
22 application on the basis that the transcript contains confidential material
23 not relevant to the issues on appeal. Any such opposition must identify
24 the portions of the transcript containing this confidential material. If the
25 defendant does not timely serve and file opposition to the application, the
26 reviewing court clerk must send a copy of the confidential transcript to
27 the People.
28

29 **(b) (c) Other in-camera proceedings and confidential records**
30

- 31 (1) Any party may apply to the superior court for an order that the record
32 include:
33
- 34 (A) A sealed confidential, separately paginated reporter's transcript of
35 any in-camera proceeding at which a party was not allowed to be
36 represented; and
37
- 38 (B) Any item that the trial court withheld from a party on the ground that
39 it was confidential.
40
- 41 (2) The application and any ruling under (1) must comply with rule 31.1.
42

- 1 (3) If the court grants ~~the~~ an application for a reporter's transcript of any in-
2 camera proceeding, it may order the reporter who attended the in-camera
3 proceeding to personally prepare the transcript. The chronological index
4 to the reporter's transcript must include the proceeding but list it as
5 "~~SEALED~~" "CONFIDENTIAL" or the equivalent.
6
7 (4) The superior court clerk must send the transcript of the in-camera
8 proceeding or the confidential item to the reviewing court in a sealed
9 envelope labeled "CONFIDENTIAL—MAY NOT BE EXAMINED
10 WITHOUT COURT ORDER." The reviewing court clerk must file the
11 envelope and store it separately from the remainder of the record.
12
13 (5) The superior court clerk must prepare an index of any material sent to the
14 reviewing court under (4), except confidential material relating to a
15 request for funds under Penal Code section 987.9, showing the date and
16 the names of all parties present at each proceeding, but not disclosing the
17 substance of the sealed matter, and send the index:
18
19 (A) To the People, and
20
21 (B) To the defendant's appellate counsel or, if appellate counsel has not
22 yet been retained or appointed, to the appellate project for the
23 district.
24
25 (6) Unless the reviewing court orders otherwise, confidential material ~~sealed~~
26 sent to the reviewing court under (4) may be examined only by a
27 reviewing court justice personally; but parties and their attorneys who had
28 access to the material in the trial court may also examine it.
29

30 **(e) (d) Omissions**

31
32 If at any time the superior court clerk or the reporter learns that the record
33 omits material that any rule requires to be included and that this rule requires
34 ~~sealed that it~~ to be kept confidential:
35

- 36 (1) The clerk and the reporter must comply with rule 32.1(b), and
37
38 (2) The clerk must comply with the provisions of this rule requiring ~~sealing~~
39 that the record be kept confidential and prescribing which party's counsel,
40 if any, must receive a copy of sealed material.
41
42

1 **Rule 32. Preparing, certifying, and sending the record**

2
3 **(a)—(b) *****

4
5 **(c) Clerk's transcript**

- 6
7 (1) Except as provided in (a) or (b), the clerk must begin preparing the clerk's
8 transcript immediately after the notice of appeal is filed.
9
10 (2) Within 20 days after the notice of appeal is filed, the clerk must complete
11 preparation of an original and two copies of the clerk's transcript, one for
12 defendant's counsel and one for the counsel for the People on appeal.
13
14 (3) On request, the clerk must prepare an extra copy for the district attorney
15 or the Attorney General, whichever is not counsel for the People on
16 appeal.
17
18 (4) If there is more than one appealing defendant, the clerk must prepare an
19 extra copy for each additional appealing defendant represented by
20 separate counsel.
21
22 (5) The clerk must certify as correct the original and all copies of the clerk's
23 transcript.
24

25 **(d) *****

26
27 **(e) Extension of time**

- 28
29 (1) The superior court may not extend the time for preparing the record.
30
31 (2) The reviewing court may order one or more extensions of time for
32 preparing the record, not exceeding a total of 60 days, on receipt of:
33
34 (A) An affidavit showing good cause, and
35
36 (B) In the case of a reporter's transcript, certification by the superior
37 court presiding judge, or a court administrator designated by the
38 presiding judge, that an extension is reasonable and necessary in
39 light of the workload of all reporters in the court.
40

1 **(f) Sending the transcripts**

2
3 (1) When the clerk's and reporter's transcripts are certified as correct, the
4 clerk must promptly send:

5
6 (A) The original transcripts to the reviewing court, noting the sending
7 date on each original;

8
9 (B) One copy of each transcript to each defendant's appellate counsel
10 and to the ~~Attorney General~~ counsel for the People on appeal; and

11
12 (C) One copy of each transcript to the district attorney or Attorney
13 General if requested under (c)(3).

14
15 (2) If the defendant's is not represented by private appellate counsel ~~has not~~
16 ~~been retained or appointed~~ when the transcripts are certified as correct, the
17 clerk must send that counsel's copy of the transcripts to the district
18 appellate project.

19
20 **(g)—(h) *****

21
22
23 **Rule 32.1. Augmenting or correcting the record in the Court of Appeal**

24
25 **(a) Subsequent trial court orders**

26
27 If, after the record is certified, the trial court amends or recalls the judgment or
28 makes any other order in the case, including an order affecting the sentence or
29 probation, the clerk must promptly certify and send a copy of the amended
30 abstract of judgment or other order—as an augmentation of the record—to the
31 ~~reviewing court, the probation officer, the defendant, the defendant's appellate~~
32 ~~counsel, and the Attorney General~~ to all those who received the record under
33 rule 32(f). If there is any additional document or transcript related to the
34 amended judgment or new order that any rule or order requires be included in
35 the record, the clerk must send these documents or transcripts with the
36 amended abstract of judgment or other order. The clerk must promptly copy
37 and certify any such document and the reporter must promptly prepare and
38 certify any such transcript.
39

1 **(b) Omissions**

2
3 If, after the record is certified, the superior court clerk or the reporter learns
4 that the record omits a document or transcript that any rule or order requires to
5 be included, the clerk must promptly copy and certify the document or the
6 reporter must promptly prepare and certify the transcript. Without the need for
7 a court order, the clerk must promptly send the document or transcript—as an
8 augmentation of the record—to ~~the reviewing court, the defendant’s appellate~~
9 ~~counsel, and the Attorney General~~ to all those who received the record under
10 rule 32(f).

11
12 ~~**(e) Defendant’s appellate counsel not yet retained or appointed**~~

13
14 ~~If the defendant’s appellate counsel has not yet been retained or appointed, the~~
15 ~~clerk must send to the district appellate project any document or transcript~~
16 ~~added to the record under (a) or (b).~~

17
18 ~~**(d)**~~ **(c) Augmentation or correction by the reviewing court**

19
20 At any time, on motion of a party or on its own motion, the reviewing court
21 may order the record augmented or corrected as provided in rule 12. The clerk
22 must send any document or transcript added to the record to all those who
23 received the record under rule 32(f).

24
25
26 **Rule 34.1 Contents and form of the record**

27
28 **(a) Contents of the record**

29
30 (1) The record must include a clerk’s transcript containing:

31
32 (A) ~~All items listed in rule 31(b), except item (10)~~ The accusatory
33 pleading and any amendment;

34
35 (B) ~~All items listed in rule 31.1(b)(1), whether or not requested; and Any~~
36 demurrer or other plea;

37
38 (C) All court minutes;

39
40 (D) All instructions submitted in writing, each one indicating the party
41 requesting it;

- 1 (E) Any written communication between the court and the jury or any
2 individual juror;
3
4 (F) Any verdict;
5
6 (G) Any written opinion of the court;
7
8 (H) The judgment or order appealed from and any abstract of judgment
9 or commitment;
10
11 (I) Any motion for new trial, with supporting and opposing memoranda
12 and attachments;
13
14 (J) Any transcript of a sound or sound-and-video recording furnished to
15 the jury or tendered to the court under rule 243.9;
16
17 (K) Any application for additional record and any order on the
18 application;
19
20 (L) Any written defense motion or any written motion by the People,
21 with supporting and opposing memoranda and attachments;
22
23 (M) If related to a motion under (L), any search warrant and return and
24 the reporter's transcript of any preliminary examination or grand
25 jury hearing;
26
27 (N) Any document admitted in evidence to prove a prior juvenile
28 adjudication, criminal conviction, or prison term;
29
30 (O) The probation officer's report; and
31
32 ~~(C)~~ (P) Any other document filed or lodged in the case, including each
33 juror questionnaire, whether or not the juror was selected.
34

35 (2) The record must include a reporter's transcript containing:
36

- 37 ~~(A) All items listed in rule 31(e)~~ The oral proceedings on the entry of
38 any plea other than a not guilty plea;
39
40 (B) The oral proceedings on any motion in limine;
41

1 ~~(B)~~ (C) All items listed in rule 31.1(b)(2), whether or not requested The
2 voir dire examination of jurors;

3
4 (D) Any opening statement;

5
6 (E) The oral proceedings at trial;

7
8 (F) All instructions given orally;

9
10 (G) Any oral communication between the court and the jury or any
11 individual juror;

12
13 (H) Any oral opinion of the court;

14
15 (I) The oral proceedings on any motion for new trial;

16
17 (J) The oral proceedings at sentencing, granting or denying of
18 probation, or other dispositional hearing;

19
20 (K) The oral proceedings on any motion under Penal Code section
21 1538.5 denied in whole or in part;

22
23 (L) The closing arguments;

24
25 (M) Any comment on the evidence by the court to the jury;

26
27 (N) The oral proceedings on motions in addition to those listed above;
28 and

29
30 ~~(C)~~ (O) Any other oral proceedings in the case, including any proceedings
31 that did not result in a verdict or sentence of death because the court
32 ordered a mistrial or a new trial.

33
34 **(b)—(d) *****
35